

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

**IN RE: LOESTRIN 24 FE ANTITRUST
LITIGATION**

MDL No. 2472

**THIS DOCUMENT RELATES TO:
Third-Party Payor Class Action**

**Master File No.
1:13-md-2472-S-PAS**

**THIRD-PARTY PAYOR CLASS PLAINTIFFS' MOTION FOR AN ORDER REGARDING
CERTAIN OPT-OUT REQUESTS**

1. Third-Party-Payor Class Plaintiffs ("TPP Class") move this Court for an Order to confirm that the opt-out requests submitted by Health Care Service Corporation ("HCSC") purportedly on behalf of its Administrative Services Only clients ("ASO Plan Class members") are deficient and that those ASOs remain in the Class. In support of this motion, the TPP Class relies on the accompanying Memorandum of Law, the Declaration of Steve D. Shadowen ("Shadowen Dec."), and the exhibits that accompany that Declaration.

2. On September 17, 2019, this Court certified a Third-Party Payor Class. ECF 1226.

3. Subsequently, the Court approved a form of Notice (Shadowen Dec., Exhibit D) which was disseminated to the TPP Class. In pertinent part, the Notice clearly set out the express requirements to timely and validly seek exclusion from the TPP Class. In pertinent part, the Notice provides:

Any Third-Party Payor that wants to opt out the claims of others whom the Third-Party Payor provides services (e.g., welfare funds or employers for whom the Third-Party Payor acts as an Administrative Services Organization), must include for each such entity all of the information noted in items i–iv above. *In addition, for each such entity the Third-Party Payor must provide a Declaration from an authorized representative of*

the entity, substantially in the form noted below and executed specifically in connection with this litigation, attesting to the Third-Party Payor's authority to opt the entity's claims out of the Class. The Third-Party Payor must mail this information to the Notice Administrator at the address below and postmarked no later than December 2, 2019. (emphasis in italics added) Notice, item 6, p. 4.

4. The Notice included a form of declaration for ASOs to use if they wanted to authorize their administrators to opt out on their behalf.

5. On December 2, 2019, HCSC sent a letter to the Notice/Claims Administrator, requesting exclusion on behalf of itself and on behalf of some unidentified ASOs. *See* Shadowen Dec., Exhibit A. HCSC later submitted purchase data to the Notice/Claims Administrator which apparently includes data regarding the ASOs' purchases. *Id.*, Exhibit B.

6. HCSC failed to provide any written declaration from any of its ASOs evidencing their grant of authority to HCSC to opt them out of the Class.

7. On December 21, 2019, Class Lead Counsel advised HCSC's counsel of the deficiency in their attempt to exclude the ASOs from the TPP Class. Neither Class Counsel nor the Notice/Claims Administrator has received any response to the December 21, 2019 letter.

Wherefore, consistent with this Court's Order, explicit requirements set forth in the Notice, and the ASOs' deficiency, the TPP Class requests this Court to reject HCSC's attempt to exclude its ASOs from the TPP Class.

Dated: February 7, 2020

Respectfully submitted,

s/Marvin A. Miller

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Co-Lead Counsel for the TPP Class

CERTIFICATE OF SERVICE

I certify that on February 7, 2020, I caused a true and correct copy of the foregoing End-Payor Plaintiffs' Motion for an Order Regarding Certain Opt Out Requests to be served through the CM/ECF system and served on Health Care Service Corporation's counsel:

Mr. Peter D. St. Phillip
Lowey Dannenberg, P.C.
44 South Broadway, Ste., 1100
White Plains, NY 10601

Dated: February 7, 2020

s/Marvin A. Miller

Marvin A. Miller